

## THE REGULATORY FAIR WARNING ACT

**HON. GEORGE W. GEKAS**

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, June 11, 1998*

Mr. GEKAS. Mr. Speaker, today I am introducing the Regulatory Fair Warning Act along with fourteen cosponsors. This legislation codifies principles of due process, fair warning, and common sense that were always intended to be required by the Administrative Procedure Act (APA). The bill would require that an agency give the regulated community adequate notice of its interpretation of an ambiguous rule. Agencies and courts would be barred from imposing penalties based on rules or policies that are not clearly known to the regulated community. They would consequently be encouraged to make known what is required or prohibited by their rules.

Specifically, the Regulatory Fair Warning Act would prohibit a civil or criminal sanction from being imposed by an agency or court if: a rule or regulation is not available to the public or known to the regulated community; a rule or regulation does not give fair warning of what is prohibited or required; or officials have been misleading about what a rule prohibits or requires.

I am pleased to introduce this simple, yet necessary measure. Without its fundamental protections, individuals and businesses must live in an atmosphere of uncertainty as to whether they are in compliance with an agency's most recent interpretation or reinterpretation of its regulations. If and when the day arrives that an agency chooses to enforce a new interpretation against a regulated party, that party has two alternatives: (1) roll the dice on expensive, protracted administrative processes and litigation, or (2) pay the penalty, regardless of culpability.

Nothing in this measure is intended to weaken the enforcement powers of federal agencies. In fact, by requiring rules to be clear, the Regulatory Fair Warning Act would promote compliance and make violators easier to catch, because the lines dividing right and wrong would be more clear. This moderate measure would provide a minimum of security and predictability to regulated individuals and businesses. It would surely improve the relationship between federal agencies and the American public.

I originally introduced a version of this legislation in the 104th Congress as H.R. 3307. That bill had strong, bipartisan support and it was favorably reported by the Judiciary Committee. Many of the same Members who cosponsored that bill are cosponsors of this one, and I thank them for their support and their work on ensuring fairness in the regulatory process.

There is wide consensus that the government and all its agencies should provide citizens with fair warning of what the law and regulations require. Likewise, citizens should be able to rely on information received from the government and its agencies. Though these principles are embodied in the Due Process Clause of the Fifth Amendment to the United States Constitution, legislation to codify and enforce them in the regulatory context would help ensure that members of the public—in addition to having due process rights—are actually treated fairly.

## INDIA CONSIDERS SANCTIONS A BLESSING—INDIAN VILLAGERS REPORT SIDE-EFFECTS FROM NUCLEAR TESTS

**HON. DAN BURTON**

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, June 11, 1998*

Mr. BURTON of Indiana. Mr. Speaker, I want to commend two recent news articles for all Members' immediate personal review, and I want to thank the President of the Council of Khalistan, Dr. Gurmit Singh Aulakh, for bringing them to my attention. The first article is from the May 30, 1998 edition of the India Tribune in which it actually says that U.S. economic sanctions on India could prove to be a blessing in disguise, and that India should "push ahead with determination" in developing its nuclear arsenal. The second article was a report by the Reuters news service on May 17, 1998, in which residents of a village near where the Indian government conducted its recent nuclear tests have been complaining about "nose bleeds, skin and eye irritation, vomiting and loose bowels."

These developments should be very disturbing to any Member who wants peace between India and Pakistan, and in the entire South Asian region. The fact that India is willing to subject its own citizens to nuclear fallout in the name of developing its nuclear arsenal speaks volumes about their real warring intentions. Indeed, the India Tribune encourages its country to not "panic in the face of international furor but stay firm and continue to build up its nuclear weapons capability."

Can there be any further doubt that India will have the capability of raining nuclear missiles down upon Pakistan soon? I think if my colleagues read these recent articles carefully, they will reach the same conclusion. India will soon have, if they do not have it already, that very capability even at the expense of harming its own citizens.

Mr. Speaker, we must be very diligent that this region does not become the epicenter of a World War III-type nuclear conflict. The stakes could not be higher.

I would like to enter the India Tribune and Reuters articles into the CONGRESSIONAL RECORD, and I strongly urge my colleagues to read them with the utmost gravity they deserve. Especially in light of the Rand Corporation's recent prediction that within a few years there will be a war between India and Pakistan. If so, that war could now include nuclear weapons.

[From the India Tribune, May 30, 1998]

BETWEEN THE LINES—INDIA SHOULD PUSH AHEAD WITH DETERMINATION

(By Brahma Chellaney)

The 24th Anniversary of the first nuclear test at Pokhran would have been another occasion to reflect on India's nuclear indecision. But exactly one week before the anniversary, the country shed its chronic ambivalence and consummated its long-held nuclear option. India unleashed its action with a vengeance, carrying out five nuclear tests in two days, unequivocally demonstrating its capability to manufacture the most modern nuclear weapons—thermonuclear, boosted fission and low-yield types. The nation has shown it has compact missile-deliverable nuclear warheads.

Jawaharlal Nehru laid the foundation of India's nuclear programme. The Nehru Gov-

ernment set up the Atomic Energy Commission in 1948 to produce "all the basic materials" because of nuclear power's "strategic nature". Nehru had said even before assuming office that as long as the world was constituted on nuclear might, "every country will have to develop and use the latest scientific devices for its protection". By the mid-1950s, India had built Asia's first atomic research reactor, Apsara, and set in motion a broad-based nuclear programme.

After the Cirus reactor started up in 1960, Nehru declared, "We are approaching a stage when it is possible for us . . . to make atomic weapons." That stage was reached unquestionably in 1964, when India completed a facility at Trombay to reprocess the Cirus spent fuel, making it the fifth country to be able to produce plutonium. When the Chinese conducted their first nuclear test in 1964—four months after Nehru's death—Homi Bhabha declared that India, if it decided, could build a nuclear bomb within 18 months.

China's first nuclear test, barely two years after its invading forces inflicted a crushing defeat on India, sharply heightened this country's insecurity. The following year, Pakistan, taking advantage of India's security travails, infiltrated its men into Jammu and Kashmir, triggering a full-scale war.

It was Lal Bahadur Shastri who initiated the Indian nuclear explosives programme in 1965. But a series of events put a brake on that programme. These included the passing away of Shastri, Bhabha's own death in a mysterious plane crash in Europe, and the political instability triggered by an initially weak government under Indira Gandhi.

When India eventually conducted a nuclear detonation in 1974, it astounded the world. U.S. intelligence was caught unawares, even though Indira Gandhi had told Parliament in 1972 that her Government was "studying situations under which peaceful nuclear explosions carried out underground can be of economic benefit to India without causing environmental hazards". Earlier in 1970, India had rejected a U.S. demarche against conducting any nuclear explosion.

By conducting the 1974 test, Indira Gandhi gave India a tangible nuclear option. The country broke no legal commitment and had the sovereign right to continue the testing programme. As Henry Kissinger told U.S. Congress after the Pokhran test, "We objected strongly, but since there was no violation of U.S. agreements involved, we had no specific leverage on which to bring our objections to bear". The test shook the 1968-designed NPT regime to its very foundation.

Had India continued to test, this regime probably would have disintegrated or been seriously damaged. Instead, the U.S.-led regime emerged stronger and with fangs because India, to the great surprise of the rest of the world and its own public, did not go beyond that one single test. It will remain a riddle of history why Indira Gandhi did not carry out another test.

One key constraint on India going overtly nuclear was its lack of missile capability. Indira Gandhi sought to remedy this by formally instituting a programme in 1983 to develop ballistic missiles. The essence of deterrence is the ability to retaliate with devastating might after surviving a first strike by an aggressor. Any nuclear deterrent force thus is centered on missiles, not bomber-aircraft, which in India's case cannot reach even the heartland of its leading security concern, China.

India's nuclear option really opened up in an operational sense only after the Agni was flight-tested in February 1994, completing its triumphant three-test developmental phase.